IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1040/2001

Decided on.23.4.2007

HPSEB & another. **…Petitioners.**

Versus

Roop Chand and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : **Mr. Shrawan Dogra, Advocate**

For the respondent No.1 **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocates General.**

Rajiv Sharma, J.

By way of this petition, the following reliefs have been sought:-

a) **"That the records of the case, specially the report of the Conciliation Officer on the basis of which Annexure P-1 is issued may be produced before the Hon'ble Court.**
b) **That order Annexure P-1 be quashed by issuance of an appropriate writ, order or Direction as the Hon'ble Court may deem fit in the circumstances of the case as far as it relates to respondent No.1.**
c) **That the cost of the petition be awarded to the petitioners."**

The brief facts necessary for adjudication of this petition are that after the failure report submitted by the Employment Officer-cum-Conciliation Officer, Jogindernagar, the following reference was made by the Government to the Industrial Tribunal-cum-Labour Court at Shimla:-

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

"Whether the termination of services of Shri Roop Chand the Executive Engineer, Jogindernagar Division, HPSEB, Joginder Nagar, Distt. Mandi, H.P. without notice and without payment of due compensation is justified and legal. If not, to what service benefits and damages the said workers are entitled?"

In sequel to the reference, the workman had filed a statement of claim before the Labour Court. The petitioner-Board had filed reply to the same. The petitioner- Board has approached this Court against the reference made by the Government vide Annexure P-1. This Court had granted interim relief against further proceedings in pursuance of Annexure P-1 on 29.10.2001.

Mr. Shrawan Dogra appearing on behalf of the Board has strenuously argued that the reference could not be made by the State Government since there was no industrial dispute existing on the date of making the reference. Mr. Shrawan Dogra had further submitted that the State Government could not make a reference since the dispute has been raised after considerable delay.

The case set out by the workman before the Labour Court was that he had completed 240 days under the petitioner- Board, but he was not issued any notice under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called as the Act). It was further averred in the statement of claim by the workman that Section 25-H of the Act was also violated by the Board by engaging new workers and by ignoring the seniority and claim of the workman.

I have heard the parties and perused the record.

This Court is of the opinion that the Government on the basis of the material adduced before it has rightly made the reference to the Labour Court. The power exercised by the State Government under the Act as to whether the reference is to be made or not is neither judicial nor quasi-judicial and is

merely administrative in nature. This Court will not scrutinize the order of reference to see whether or not there was any material before the Government in support of its opinion because the formation of opinion is only administrative. This Court will not hold the reference bad and quash the proceedings pending before it for want of jurisdiction since this Court is satisfied that there was sufficient material before the State Government on the basis of which the reference was made. The contention regarding the maintainability of the reference will also not be considered by this Court at this stage. The preliminary objection regarding maintainability of the reference could be raised before the Tribunal by the employer which would consider the question before examining the matter on merits and give a finding whether or not it has jurisdiction to proceed with the matter.

The present case is squarely covered by the judgment rendered by this Court in CWP No. 219/2002 decided on 21.5.2007, titled as ***HPSEB and another Vs. Kamlesh Kumar and others***. Accordingly, this petition is disposed of with no order as to costs. It will be open to the petitioner-Board to raise all objections sought to be raised before this Court before the Labour Court which would consider and dispose of the same in accordance with law. The interim order dated 29.10.2001 is vacated.

(Rajiv Sharma), Judge

April 23, 2007
Awasthi